

**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

<b>ANNIE BELL LAMBERT,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CASE NO. 1:08-cv-80-MEF</b>
	)	
<b>WINN-DIXIE STORES, INC.,</b>	)	<b>Formerly in the Circuit Court of</b>
	)	<b>Houston County, AL.</b>
<b>Defendant.</b>	)	<b>Case No. 08-900008-L</b>

**PLAINTIFF’S BRIEF IN OPPOSITION TO DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

Defendant is the owner and/or operator of the store in which Plaintiff was injured, was properly served with Plaintiff’s Complaint and therefore should not be awarded a Rule 56 Summary Judgment based on Plaintiff’s misdescribing the Defendant.

**I. STATEMENT OF UNDISPUTED FACTS**

1. On or about the January 15, 2006, Plaintiff was injured while shopping at a Winn-Dixie store located at 1571 Westgate Parkway, Dothan, Alabama. (Complaint, Exh. A to Doc 1).
2. Plaintiff was contacted by Melanie Alm, an adjustor with the Winn Dixie Claims Service Center, on January 20, 2006. (See recorded statement transcript, pg.1 lines 1 and 2, attached as Exhibit “A”<sup>1</sup>).
3. Plaintiff, through her legal counsel, conducted negotiations with Defendant’s agent. (See letter, attached as Exhibit “B”).

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<sup>1</sup> This document was sent to Plaintiff as part of Defendant’s Response to Plaintiff’s Request for Production.

4. On January 7, 2008, a Complaint was filed by the Plaintiff in the Circuit Court of Houston County, Alabama. (Complaint, Exh. A to Doc 1).
5. The Complaint was served upon Defendant's registered agent, Corporation Service Company, 1201 Hayes Street, Tallahassee, Florida (See Affidavit of Jake A. Norton and attachments 1, 2 and 3 attached as Exhibit "C").
6. The Defendant subsequently removed the case to this Court. (Notice of Removal, Doc. 1).
7. Said Complaint referred to the place of the accident as being "upon the premises of Defendant." (Complaint paragraph 1, Exh. A to Doc 1).
8. On February 4, 2008, Defendant served its Answer upon Plaintiff and therein stated, "Defendant admits the time and place of said accident..." (Answer, paragraph 1, Doc. 2).
9. In its Rule 26(a)(1) Initial Disclosures, Defendant, Winn-Dixie Stores, Inc., refers to itself as "Winn-Dixie" and identifies the manager on duty at the time of the accident as follows: "Mr. Adams is a Winn-Dixie manager and was the manager on duty for Winn-Dixie at the time of the Plaintiff's alleged accident." (See Defendant's Initial Disclosures paragraph A, attached as Exhibit "D").
10. On May 29, 2008, Defendant served upon Plaintiff Defendant's Supplemental Initial Disclosures. Once again, Defendant referred to itself as "Winn-Dixie" and an individual named James Boswell as follows: "Mr. Boswell was a Winn-Dixie employee and has knowledge with regard to the condition of the area in which Plaintiff fell at the time of the accident." (See Defendant's Supplemental Initial Disclosures paragraph A, attached as Exhibit "E").

11. On June 3, 2008, Defendant's counsel deposed Plaintiff and Plaintiff's counsel deposed Winn-Dixie store manager, Chris Adams. (See Notice of Deposition, attached as Exhibit "F" and Notice to Take Deposition attached as Exhibit "G").
12. On June 18, 2008, Plaintiff served upon Defendant Plaintiff's First Set of Interrogatories to Defendant, Plaintiff's Requests for Admission, and Plaintiff's Requests for Production. (See Certificate of Service, Exhibit "H").
13. On July 18, 2008, Defendant filed Defendant's Motion for Summary Judgment. (Motion, Doc. 7).

## **II. STANDARD OF REVIEW**

The standard of review applicable to a summary judgment motion was well stated by Judge Sherrill in the recent case of *Anderson v. Tyus*, 2007 WL 2884367 (N.D. Fla.).

With the Court's kind indulgence, Plaintiffs will draw liberally from that decision:

On a motion for summary judgment Defendants initially have the burden to demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corporation v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2553-54, 91 L.Ed.2d 265 (1986). If they do so, then the burden shifts to Plaintiff to come forward with evidentiary material demonstrating a genuine issue of material fact for trial. *Id.* An issue of fact is "material" if it could affect the outcome of the case. *Hickson Corp. v. Northern Crossarm Co., Inc.*, 357 F.3d 1256, 1259 (11th Cir.2004)(citations omitted). Plaintiff must show more than the existence of a "metaphysical doubt" regarding the material facts, *Matsushita Electric Industrial Co., LTD v. Zenith Radio Corporation*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986), and a "scintilla" of evidence is insufficient. The court must decide "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Hickson Corp.*, 357 F.3d at 1260, quoting *Anderson v Liberty Lobby*, 477 U.S.

242, 252, 106 S.Ct. 2505, 2505, 91 L.Ed.2d 202 (1986).<sup>2</sup>  
**All reasonable inferences must be resolved in the light most favorable to the nonmoving party.** *Watkins v. Ford Motor Co.*, 190 F.3d 1213, 1216 (11th Cir. 1999).

"Rule 56(e) ... requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Owen v. Wille*, 117 F.3d 1235, 1236 (11th Cir. 1997), *cert. denied* 522 U.S. 1126, 118 S.Ct. 1074, 140 L.Ed. 133 91998), *quoting Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553 (quoting Fed. R.Civ.P. 56(c), (e)). The nonmoving party need not produce evidence in a form that would be admissible as Rule 56(e) permits opposition to a summary judgment motion by any of the kinds of evidentiary materials listed in Rule 56(c). *Owen v. Wille*, 117 F. 3d at 1236; *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553.

*Anderson* at 1, 2 (emphasis added).

As noted above, the role of the trial judge at the summary judgment stage is to determine if there are genuine issues of material fact that warrant placing the case before a jury. It is not the Court's role to act as the finder of fact, a province left to the jury should the Court determine there are issues to be tried.

### III. LEGAL ARGUMENT

#### A. Plaintiff has been litigating her claim against the proper entity that owned and/or operated the grocery store in which she fell.

Plaintiff filed her Complaint in state court. After removing the case to federal court, Defendant answered Plaintiff's Complaint. In Defendant's Answer, Defendant admitted to ownership of the subject store. In her Complaint, Plaintiff states in paragraph 1, "On or about the 15<sup>th</sup> day of January, 2006, Plaintiff, while an invitee, was *upon the*

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<sup>2</sup> The "double" reference to page 2505 of S.Ct. 106 appears in the version of *Anderson v. Tyus* distributed by Westlaw. This is apparently a typographical error as a review of *Anderson v. Liberty Lobby* indicates the subject language actually appears at page 2512.

*premises of Defendant* in Dothan, Houston County, Alabama, when Plaintiff fell and was injured.” (emphasis added)(Complaint paragraph 1, Exh. A to Doc. 1).

Defendant responds to this allegation in its Answer, “Defendant admits the time and *place* of said accident, but denies the remaining allegations of the paragraph and demands strict proof thereof. (emphasis added)(Answer, paragraph 1, Doc. 2). The only *place* referred to in the relevant paragraph of her Complaint is *the premises of Defendant*.

Defendant has acknowledged itself to be the owner and/or operator of the subject store since the onset of this case. It was not until the Defendant was served with Plaintiff’s Request for Admissions that it made issue of the defendant’s name listed on Plaintiff’s Complaint. Plaintiff’s Complaint, at worst, misdescribes Defendant and Plaintiff seeks to remedy this through her Motion for Leave of Court to Amend Complaint filed contemporaneously with her this motion and brief.

**B. Under the law established in Ex parte CTF Hotel Management Corporation, misdescribing a defendant by the trade name is not grounds for a Summary Judgment.**

In *Ex Parte CTF Hotel Management Corporation*, 719 So.2d 205, (Ala. 1998) the plaintiff sued a hotel and hotel manager for various torts. The subject hotel was owned by one corporate entity, Riverview Plaza Associates, Inc. and operated by a separate corporate entity, Stouffer Hotel Management Corporation. The hotel operated under the name Stouffer Riverview Plaza Hotel. The plaintiff served his complaint upon an employee of Stouffer Hotel Management Corporation. After neither hotel owner nor operator responded to the plaintiff’s complaint, the plaintiff received a judgment against Stouffer Riverview Plaza Hotel.

The plaintiff later discovered that Stouffer Riverview Plaza Hotel was not the name of the intended defendant and sought to have his judgment amended to reflect the proper name of the defendant.

The Court held that a “judgment entered against a trade name is a judgment against the individual doing business under that trade name, at least so long as the individual was personally served with the complaint. *Id* at 208.

In the present case, Plaintiff has filed her Complaint, describing the defendant as Winn-Dixie Stores, Inc., although it appears that Winn-Dixie Montgomery, Inc. is the correct name of Defendant. Defendant was aware of the subject accident, aware of the subject claim and aware of the filing of Plaintiff’s Complaint against Defendant. Plaintiff’s Complaint was properly served upon the registered agent of Winn-Dixie Montgomery, Inc.

Defendant has held itself out to be the true owner/operator of the subject store and is only now trying to capitalize on the ambiguous corporate relation it shares with other entities sharing the Winn-Dixie trade name. Defendant never denied being properly served nor did it deny dominion over the subject store until its recent Motion for Summary Judgment. To the contrary, Defendant identifies the store manager at the time of the accident as being one of Defendant’s employees. Further it identifies an associate with knowledge of the subject accident as one of its employees.

**C. Defendant in fact owns/operates the subject store.**

In its Rule 26(a)(1) Initial Disclosures, Defendant refers to itself as “Winn-Dixie” and further states that the manager on duty at the time of Plaintiff’s accident was Chris Adams, “a Winn-Dixie manager.” (Defendant’s Initial Disclosures paragraph A, attached

as Exhibit “D”). If Chris Adams was the Winn-Dixie manager on duty at the time of Plaintiff’s accident and Winn-Dixie is the name Defendant is known by, then the named Defendant was operating the store at the time of Plaintiff’s accident. Further, Defendant continued to refer to itself as “Winn-Dixie” in its Supplemental Disclosures and referred to an individual named James Boswell as follows: “Mr. Boswell was a Winn-Dixie employee and has knowledge with regard to the condition of the area in which Plaintiff fell at the time of the accident.” (Defendant’s Supplemental Initial Disclosures paragraph A, attached as Exhibit “E”). By these actions, Defendant has identified itself as the entity that employed the manager and an employee of the subject store and therefore operates the subject store.

**D. Plaintiff’s Complaint was properly served upon Defendant.**

Rule 4(c)(6) of the Alabama Rules of Civil Procedure allow for serving a corporate defendant by serving an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process. Plaintiff’s Complaint was served upon the Defendant with the Defendant’s registered agent via certified mail as evidenced by the attached Notice of Service. In its Answer, Defendant never raised the defenses insufficient process or insufficient service of process and therefore waived these defenses. (Answer, Doc. 2).

**E. Winn-Dixie Stores, Inc is the name given for the operator of the store located at 1571 Westgate Parkway, Dothan, Alabama, on the Winn-Dixie website.**

On its website, [http://www.Winn-Dixie.com/about\\_us/list.asp](http://www.Winn-Dixie.com/about_us/list.asp) , Winn-Dixie provides a list of “stores currently operated by Winn-Dixie” directly below the name Winn-Dixie Stores, Inc. Among those stores listed is the Winn-Dixie store located at

1571 Westgate Parkway, Dothan, Alabama, the subject store of this claim. (See 2<sup>nd</sup> Affidavit of Jake A. Norton and attachments 1 and 2, attached as Exhibit “I”). Once again, Winn-Dixie Montgomery, Inc. is hiding behind a false corporate façade in an attempt to create confusion as to the name of the owner/operator of the subject store. Defendant should not be allowed to rely on these misrepresentations and Plaintiff should be allowed to amend her Complaint to properly describe Defendant.

**F. Neither the Cofield case nor the West Facilities case involve a situation where the proper defendant was served, but just incorrectly designated on the Complaint.**

In Defendant’s Brief in Support of Defendant’s Motion For Summary Judgment, Defendant relies on *Cofield v. McDonald’s Corporation, et al.*, 514 So.2d 953 (Ala. 1987). The present case is distinguishable from *Cofield* in that in *Cofield*, the named defendant was dismissed by the plaintiff from his Complaint. The plaintiff in *Cofield* intended to pursue his claim against the defendants named in the body of his Complaint but left out from the title of the action.

In this case, Plaintiff’s Complaint contains a misdescribed defendant in which Defendant has been described as “Winn Dixie Stores, Inc.” instead of “Winn Dixie Montgomery, Inc.” The facts of *Cofield* have little to do with the facts of this case. The correct defendant was served with Plaintiff’s Complaint. Defendant has acknowledged that it does in fact own the store made the subject of this action and/or was operating the subject store at the time of the subject incident.

Defendant further relies on this Courts ruling in *Smith v. West Facilities Corp.*, No. Civ. 05-0429WSC, 2006 WL 898134 (S.D. Ala. Apr. 5, 2006) to support its Motion for Summary Judgment. *Smith* is distinguishable from the present case in that in *Smith*



the plaintiff sued the wrong defendant as evidenced by the defendant's answer which included in the defense, "The Amended Complaint fails to state a claim against West Facilities Corporation because plaintiff was never employed by West Facilities Corporation and that corporation is therefore not the proper defendant in this lawsuit." *Id* at 1. The Defendant vehemently denied ever employing the plaintiff and filed numerous pleadings protesting the same. *Id*. This Court went to great lengths in describing the many times the defendant placed the plaintiff on notice that the plaintiff was suing the wrong entity.

In the present case, the correct defendant has been advised of Plaintiff's claim, has been properly served with Plaintiff's Complaint and has waived any defenses that may preclude Plaintiff's claim. To this date, the Winn-Dixie conglomeration continues to describe the owner/operator of the subject store as Winn-Dixie Stores, Inc. as evidenced by their corporate website. The Defendant has merely been misdescribed and is now trying to capitalize on the ambiguous corporate relation it has with other Winn-Dixie entities.

### **CONCLUSION**

Defendant has represented itself as Winn-Dixie Stores, Inc., has been properly served in this matter, has waived insufficient process and insufficient service of process and has litigated this claim from the claim's conception. Plaintiff has pointed out that misdescribing a defendant is not grounds for Summary Judgment and Plaintiff has filed her Motion for Leave to Amend Complaint contemporaneously with this motion and brief. Plaintiff has presented sufficient evidence to lead a jury to believe that Defendant is the owner/operator of the subject store and Defendant has merely been misdescribed in

Plaintiff's Complaint. Taking all reasonable inferences in the light most favorable to Plaintiff, a jury could determine that Defendant has only been misdescribed and is relying on corporate ambiguity and similarity of names with other Winn-Dixie entities.

WHEREFORE, the premises considered, Plaintiff respectfully asks this Honorable Court to render a decision DENYING the Summary Judgment Motion filed by Defendant.

**COCHRAN, CHERRY, GIVENS,  
SMITH, LANE & TAYLOR, P.C.**

/s/ Jake A. Norton  
Jake A. Norton, Esq. (NOR067)  
ASB 4172-J72N  
163 west Main Street  
Dothan, AL. 36301

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 4th day of August, 2008, served a copy of the foregoing upon counsel of record by filing the same with the Clerk of Court via CM/ECF or by U.S. MAIL, postage prepaid:

M. Warren Butler  
Scott D. Stevens  
Starnes & Atchison, LLP  
P.O. Box 1548  
Mobile, Al. 36633

/s/ Jake A. Norton  
Of Counsel

Page 1 of 6  
R/S – Annie Lambert  
Clmt – Annie Lambert  
File #A611200469  
01/22/2008



This is Melanie Alm with the Winn-Dixie Claims Service Center. Today's date is January 20, 2006 and the time now is approximately 3:15 p.m. Eastern Time.

Q. Do you understand that this is being recorded?

A. Yes, I do.

Q. And is that done with your permission?

A. Yes.

Q. Okay. State your name for me please.

A. Annie Lambert.

Q. And your home address?

A. My home address is 2806 Rockcreek Road, Rockcreek is one word, and that is in Dothan, D O T H A N, Alabama 36303.

Q. 36303?

A. Yes.

Q. Okay. And are you married or single?

A. I am divorced.

Q. Your date of birth?

A. [REDACTED]

Q. And your Social Security number?

A. [REDACTED] I think is right.

Q. 2046, okay. Are you currently employed outside of the home?

A. Yes, I am. I work a 40-hour week for J.C. Penney in Dothan.

Q. Okay, so you're missing work then, huh?

A. Yes, I am.

Q. So we're talking about an accident that occurred this past Sunday, that would have been January 15, 2006, correct?

A. That's exactly right.

Q. Okay. Do you remember about what time of day this happened?

A. Somewhere around 1:00 or 1:30, I'm not exactly... I can't be exact, but somewhere in that time frame.

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R/S – Annie Lambert

Clmt – Annie Lambert

File #A611200469

01/22/2008

Q. In the afternoon, 1:00 to 1:30 in the afternoon?

A. Yes.

Q. Okay. And whereabouts in the store did this happen?

A. Okay, I was in front of the seafood department where the freezers are, the seafood, the fresh seafood, such as salmon, catfish, that type thing.

Q. Okay.

A. I was pushing my buggy along in front, and I happen to see the red salmon and I thought I was interested in that. I stopped my buggy, and as I said I turned and with my left foot, I stepped upon the dark tile in front of the seafood freezer. And when I stepped upon that dark tile, my foot had shot out from under me and I landed on my left leg. All my weight went right on the, uh, that side of my leg from right about where the hip... the leg joins onto the hip all the way down to my knee. All of my weight went on that part of my leg. I could not move. I had to sit there for I don't know how long, several minutes. The store manager or the assistant store manager, I don't know if he told me he was the store manager or the assistant store manager, and I can't recall his name, even though I've got it wrote down here somewhere. But anyway, he saw the accident, he saw me fall, and he came up to me and asked if he could help, and I, uh, told him that I could not move and he would just have to leave me be 'til I could see if, you know, I could get up or whatever. In the meantime, he offered to call 911. And he was very nice, very considerate. But in the meantime, another person that worked there in the store, another guy, came up and he stressed on him, asked him to go and get a chair and they were going to see if they could help me up. So the guy went away and got a chair and came back, and eventually they were able to help me to my... to get to my... to the chair. However, I wasn't able to bear any weight or anything on the leg. I just mainly got up on my right side. And, of course, they helped me to sit. And he offered his cell phone and I called my sister, which was approximately 5 minutes away. And she and her husband came out and got me and they put me on a wheelchair and held me... I mean to help me to my car. And so they helped me into my car and she drove me to the \_\_\_\_\_ Hospital to the emergency room. And in there I was in the emergency room until somewhere between 6:30 and 7:00 they took me into surgery.

Q. Okay, and (inaudible).

A. Right, yes. And the doctor said he put in three screws, or I don't even know the terminology, all I know is that he used the word three screws or whatever they put in your leg.

Q. Okay.

A. I'm to go back to him Thursday. And I'll probably be a little bit more at myself and know what he did and did not say.

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R/S – Annie Lambert

Clmt – Annie Lambert

File #A611200469

01/22/2008

Q. Okay, I'm sure you weren't primarily concerned with that at that time.

A. Well.

Q. Going back to the store just real quickly. Do you have any idea what it was that caused you to fall?

A. I have no idea, except the floor was extremely slick like a... while I was sitting there, I remember just rubbing my hand across the floor and it felt just like... I don't know if it was greasy or what, but it was just as slick as glass, any glass I've ever felt of, you know, it was just so slick. And the guy said to me while I was on the floor, I remember him saying, "Well, we had a sign up." And I said the sign, as best I remember, was like against the freezer, which I mean no customer would have even... I don't think anybody would have even seen the sign. I certainly did not see it until he pointed it out to me.

Q. Okay. It was up against the freezer?

A. Well, it was closer to the freezer than it was away from the freezer. Now, the only thing that I can say about that – and I know everybody is different – I work in a store, so we do have accidents sometimes. People, you know, fall or what have you. But if it's anything like where we have to mop or anything of danger, they'll put out like three or four of those things and rope off the area. We don't ever just stick something like that out. And I mean that's the way we do it. And I know everybody's different. I'm not saying that's right or wrong. But I did not see the sign. Had it had been roped, I probably would have... it would have caught my eye.

Q. Okay.

A. I did not notice it otherwise.

Q. Okay. Can you estimate for me, and I know you didn't see it at the time that you fell, but when he pointed it out to you, about how far away from the sign were you?

A. It was not very... how far away was I from the sign?

Q. Right.

A. Oh, Lord. \_\_\_\_\_, about how far is it between me and you here, about a yard, two yards? About a yard or so, about a yard I guess.

Q. Okay.

A. I really cannot be certain about that because I was not in a position to...

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R/S – Annie Lambert

Clmt – Annie Lambert

File #A611200469

01/22/2008

Q. Okay. And have you ever been hurt while you were working?

A. No, I've never had an accident.

Q. Okay. Obviously your hip and your leg is bothering you at this point. Is there anything else that you notice being sore?

A. Well, I don't know if... they took x-rays of my leg and my shoulder, and I'm having some pain in my shoulder. Now, he did not tell me I had a fracture or anything, but when I go back to him Thursday, I'm going to let him double-check that, because I am having some discomfort in my left shoulder. I don't know if I struck something as I was coming down.

Q. Okay.

A. Because like I said, I landed on that leg, but I could have hit the freezer as I was coming down, but I don't remember doing that. It could have been \_\_\_\_\_ that I... in the way I fell, I don't know. But I'm having discomfort in my left shoulder.

Q. Okay. Have you ever had any prior problems with either your shoulder or that leg or hip?

A. No.

Q. Okay. Can you think of anything else I should know about at this point?

A. Well, I don't know. I just told you what has happened.

Q. Okay.

A. I mean I'm not being rude or anything, I just don't know of anything else to tell you.

Q. No, I think we've covered everything.

A. I told you the condition that I'm in. And then I won't know about what is going to... the future will hold until I go back to the doctor, what he is going to say, you know.

Q. Right.

A. But I'm just doing everything that they're... he's suggesting that I do, and hope to God I can be back to where I was at one of these days.

Q. Okay, if it's all right with you then, I'll go ahead and turn off the tape, okay?

A. That's fine.

Q. You do understand this was recorded, correct?

A. Yes, I do.

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R/S – Annie Lambert

Clmt – Annie Lambert

File #A611200469

01/22/2008

Q. And that was done with your permission?

A. Right.

Q. Okay.

(ilp)



**Sedgwick**

Sedgwick Claims Management Services, Inc.  
P. O. Box 24787, Jacksonville, FL 32241-4787  
Telephone 904-419-5300 Facsimile 904-419-5365



October 20, 2006

Jake A. Norton, Esq.  
The Cochran Firm  
P.O. Box 927 163 West Main St.  
Dothan, AL 36302

RE: Claimant: Annie Lambert  
Claim #: A611200469-0001-01  
Date of Accident: 01/15/2006  
Division: Retail Grocery Store-Montgomery Division  
Location: Winn-Dixie #0426  
1571 Westgate Parkway Dothan, AL

Dear Jake A. Norton, Esq.:

This file has been transferred to me for further handling. I note you advised the prior adjuster in August that you were preparing a demand and would have it to her shortly. I have not received the demand.

Please forward the demand to include any liens or write offs. Additionally I will need the past five years medical records to complete my evaluation.

Sincerely,

Gloria Davis  
Claims Examiner III

*Carri*

*Kerry Ledbetter ext 5368*





**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**ANNIE BELL LAMBERT,**

**Plaintiff,**

**VS.**

**WINN-DIXIE STORES, INC.,**

**Defendant.**

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)

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**) CASE NO. 1:08-cv-80-MEF**

)

**) Formerly in the Circuit Court of**

) **Houston County, AL.**

**) Case No. 08-900008-L**

## AFFIDAVIT OF JAKE A. NORTON

Personally appeared before me, the undersigned, who being by me duly sworn,  
deposes and says as follows:

1. My name is Jake A. Norton and I am counsel for the plaintiff in the above styled action. I am over the age of nineteen and I have personal knowledge of the facts contained in this affidavit. I am competent to testify in court if called to do so.
2. On January 4, 2008 I performed a search on the Florida Department of State Division of Corporations website and concluded that the Registered Agent Name & Address for Winn-Dixie Montgomery to be Corporation Service Company, 1201 Hays Street, Tallahassee FL 32301 US. As evidence of this I have attached a copy of pertinent part of the search printout to this affidavit and have identified it as attachment 1.
3. On January 7, 2008 I electronically filed the plaintiff's Complaint with the Clerk of the Circuit Court of Houston County. As evidence of this I have attached

a copy of the Notice of Electronic Filing to this affidavit and have identified it as attachment 2.

4. On January 25, 2008, I received notification from the Clerk of the Circuit Court of Houston County indicating that Defendant's registered agent had received service of the plaintiff's Complaint on January 10, 2008. As evidence of this I have attached a copy of the Notice and Domestic Return Receipt forwarded to me by the Clerk of the Circuit Court of Houston County, Carla Woodall, and have identified it as attachment 3.

Further affiant saith not.

  
\_\_\_\_\_  
Jake A. Norton

Dated this the 4<sup>th</sup> day of August, 2008.

STATE OF ALABAMA)  
COUNTY OF DALE )

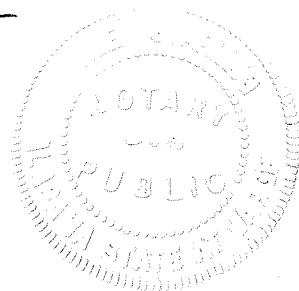
Jake A. Norton, being first duly sworn, deposes and says that he has read the foregoing instrument and he knows the contents thereof; that the same is true to his knowledge and belief.

Sworn to and subscribed before me this the 4<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires

April 18, 2012



FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS

Blumberg No. 5208

EXHIBIT

Attachment 1

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Entity Name Search

## Detail by Entity Name

### Florida Profit Corporation

WINN-DIXIE MONTGOMERY, INC.

### Filing Information

Document Number 330286  
FEI Number 591212119  
Filed 05/20/1968  
State FL  
Status ACTIVE  
Last Event AMENDED AND RESTATED ARTICLES  
Event Date Filed 11/21/2006  
Event Effective Date NONE

### Principal Address

5050 EDGEWOOD COURT  
JACKSONVILLE FL 32254 US

Changed 11/21/2006

### Mailing Address

5050 EDGEWOOD COURT  
JACKSONVILLE FL 32254 US

Changed 11/21/2006

### Registered Agent Name & Address

CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE FL 32301 US

Name Changed: 06/15/2000

Address Changed: 06/15/2000

### Officer/Director Detail

#### Name & Address

Title P

ECKSTEIN, F O  
5050 EDGEWOOD COURT  
JACKSONVILLE FL 32254 US

Title VP

\* Winn-Dixie Stores, Inc. \*

Circle #13

3850 W. Main Street

Dathan, AL. 36305

793-4518

422

Ronald Cosby



**AlaFile E-Notice**

**38-CV-2008-900008.00**

To: JAKE NORTON  
jnorton@cochranfirm.com

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## **NOTICE OF ELECTRONIC FILING**

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IN THE CIRCUIT COURT OF HOUSTON COUNTY, ALABAMA

ANNIE BELL LAMBERT v. WINN-DIXIE STORES, INC. ET AL  
38-CV-2008-900008.00

The following complaint was FILED on 1/7/2008 10:28:51 AM

Notice Date: 1/7/2008 10:28:51 AM

CARLA H. WOODALL  
CIRCUIT COURT CLERK  
HOUSTON COUNTY, ALABAMA  
114 NORTH OATES STREET  
DOTHAN, AL 36302

334-671-8730



**Haley Starling**

---

**From:** AlaFile E-Notice [enotices@alafile.com]  
**Sent:** Monday, January 07, 2008 11:53 AM  
**To:** Jake Norton  
**Cc:** Haley Starling  
**Subject:** Notice of Complaint Filing - 38-CV-2008-900008.00

**Attachments:** Filing.pdf



Filing.pdf (225 KB)

38-CV-2008-900008.00  
ANNIE BELL LAMBERT v. WINN-DIXIE STORES, INC. ET AL  
FILED ON 1/7/2008 10:28:51 AM

State of Alabama

Unified Judicial System

Form AR Civ-93 Rev.5/99

**COVER SHEET  
CIRCUIT COURT - CIVIL CASE**

(Not For Domestic Relations Cases)

Case Number:

**38-CV-200**

Date of Filing:

01/07/2008



ELECTRONICALLY FILED

1/7/2008 10:28 AM

CV-2008-900008.00

CIRCUIT COURT OF

HOUSTON COUNTY, ALABAMA

CARLA H. WOODALL, CLERK

**GENERAL INFORMATION****IN THE CIRCUIT OF HOUSTON COUNTY, ALABAMA  
ANNIE BELL LAMBERT v. WINN-DIXIE STORES, INC. ET AL****First Plaintiff:**☐ Business☒ Individual☐ Government☐ Other**First Defendant:**☒ Business☐ Individual☐ Government☐ Other**NATURE OF SUIT:****TORTS: PERSONAL INJURY**☐ WDEA - Wrongful Death☒ TONG - Negligence: General☐ TOMV - Negligence: Motor Vehicle☐ TOWA - Wantonnes☐ TOPL - Product Liability/AEMLD☐ TOMM - Malpractice-Medical☐ TOLM - Malpractice-Legal☐ TOOM - Malpractice-Other☐ TBFM - Fraud/Bad Faith/Misrepresentation☐ TOXX - Other: \_\_\_\_\_**TORTS: PERSONAL INJURY**☐ TOPE - Personal Property☐ TORE - Real Property**OTHER CIVIL FILINGS**☐ ABAN - Abandoned Automobile☐ ACCT - Account & Nonmortgage☐ APAA - Administrative Agency Appeal☐ ADPA - Administrative Procedure Act☐ ANPS - Adults in Need of Protective Services**OTHER CIVIL FILINGS (cont'd)**☐ MSXX - Birth/Death Certificate Modification/Bond Forfeiture  
Appeal/Enforcement of Agency Subpoena/Petition to  
Preserve☐ CVRT - Civil Rights☐ COND - Condemnation/Eminent Domain/Right-of-Way☐ CTMP-Contempt of Court☐ CONT-Contract/Ejectment/Writ of Seizure☐ TOCN - Conversion☐ EQND- Equity Non-Damages Actions/Declaratory  
Judgment/Injunction Election Contest/Quiet Title/Sale For  
Division☐ CVUD-Eviction Appeal/Unlawful Detainer☐ FORJ-Foreign Judgment☐ FORF-Fruits of Crime Forfeiture☐ MSHC-Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition☐ PFAB-Protection From Abuse☐ FELA-Railroad/Seaman (FELA)☐ RPRO-Real Property☐ WTEG-Will/Trust/Estate/Guardianship/Conservatorship☐ COMP-Workers' Compensation☐ CVXX-Miscellaneous Circuit Civil Case**ORIGIN:**F ☒ INITIAL FILINGA ☐APPEAL FROM  
DISTRICT COURTO ☐ OTHERR ☐ REMANDEDT ☐TRANSFERRED FROM  
OTHER CIRCUIT COURT**HAS JURY TRIAL BEEN DEMANDED?**☒ Yes ☐ No**RELIEF REQUESTED:**☒ MONETARY AWARD REQUESTED ☐ NO MONETARY AWARD REQUESTED**ATTORNEY CODE:** NOR067

1/7/2008 10:28:07 AM

/s JAKE NORTON

**MEDIATION REQUESTED:**☐ Yes ☐ No ☒ Undecided

Dated this the 7th day of January, 2008.

**COCHRAN, CHERRY, GIVENS,  
SMITH, LANE & TAYLOR, P.C.**

/s/ Jake A. Norton

**JAKE A. NORTON (NOR067)**

Attorney for Plaintiff

Post Office Box 927

Dothan, Alabama 36302

(334) 793-1555

(334) 793-8280 (facsimile)

**JURY DEMAND**

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY.

/s/ Jake A. Norton

OF COUNSEL

**DEFENDANT TO BE SERVED AT:**

CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE, FL. 32301

WINN-DIXIE STORE # 422  
Attention: Ronald Cosby  
3850 West Main Street  
Dothan, Al. 36301



EXHIBIT  
Attachment 3

AVS309

ALABAMA JUDICIAL DATA CENTER  
HOUSTON COUNTY

TRANSMITTAL

CV 2008 900008.00  
C. LAWSON LITTLE

IN THE CIRCUIT COURT OF HOUSTON COUNTY  
ANNIE BELL LAMBERT V. WINN-DIXIE STORES, INC. ET AL

TO: NORTON JAKE AUSUSTO  
163 W MAIN STREET  
DOTHAN AL 36302

ATTORNEY FORC001: LAMBERT AN

NOTICE DATE: 01/25/2008

CLERK: CARLA WOODALL  
114 NORTH OATES STREET  
DOTHAN AL 36302  
(334) 677-4859

OPERATOR: SAR  
PREPARED: 01/25/2008

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com

**FILED**

Postage \$ 4.11  
 Certified Fee 2.45  
 Return Receipt Fee (Endorsement Required) 2.15  
 Restricted Delivery Fee (Endorsement Required) 3.00  
 Total Postage & Fees \$ 12.11

Sent To Winn-Dixie Stores, Inc.  
% Corporation Service C  
1201 Hayes Street  
Tallahassee, FL 32301

PS Form 3800, August 2006

7007 1490 0001 9835 0633

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Winn-Dixie Stores, Inc.  
% Corporation Service C  
1201 Hayes Street  
Tallahassee, FL 32301  
CV-08-900008 L

## 2. Article Number

(Transfer from service label)

7007 1490 0001 9835 0633

PS Form 3811, February 2004 S+C Domestic Return Receipt**COMPLETE THIS SECTION ON DELIVERY**

## A. Signature

Kim Glover

☐ Agent☐ Addressee

## B. Received by (Printed Name)

Kim Glover

## C. Date of Delivery

1/24/08

Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

JAN 22 2008

## 3. Service Type

☒ Certified Mail Express Mail  
☐ Registered Return Receipt for Merchandise  
☐ Insured Mail Houston County, AL

## 4. Restricted Delivery? (Extra Fee)

☒ Yes

SCANNED

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
		<p>B. Received by (Printed Name) <u>[Signature]</u> C. Date of Delivery <u>1-11-08</u></p>	
		<p>D. Is delivery address different from item <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> <p><u>3850 Westmain A 500</u></p> <p><u>JAN 14 2008</u></p>	
<p>1. Article Addressed to:</p> <p><u>Winn-Dixie Store # 422</u></p> <p><u>Attn: Ronald Cosby</u></p> <p><u>3850 W. Main Street</u></p> <p><u>Dothan, Alabama 36301</u></p> <p><u>CV-08-900008 L</u></p>		<p>3. Service Type <u>Extra Mail</u></p> <p><input type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number</p> <p>(Transfer from service label)</p> <p><u>7007 1490 0001 9835 0640</u></p>		<p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>	
<p>PS Form 3811, February 2004 <u>34C</u> Domestic Return Receipt</p>			

SCANNED



IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ANNIE BELL LAMBERT,

\*

Plaintiff,

\*

CASE NO. 1:08-cv-00080-SRW

v.

\*

WINN-DIXIE STORES, INC.,

\*

Formerly in the Circuit Court of  
Houston County, AL

Defendant.

\*

Case No. 08-900008-L

**DEFENDANT'S INITIAL DISCLOSURES**

Comes now the Defendant, Winn-Dixie Stores, Inc. ("Winn-Dixie"), by and through undersigned counsel, and makes the following disclosures required by Federal Rules of Civil Procedure 26(a)(1), based on the information now reasonably available.

**A. Individuals likely to have Discoverable Information which Winn-Dixie may use to Support its Claims or Defenses.**

1. Chris Adams  
1441 Fox Run Parkway  
Opelika, Alabama 36801  
(334) 741-4140

Mr. Adams is a Winn-Dixie manager and was the manager on duty for Winn-Dixie at the time of the Plaintiff's alleged accident. Mr. Adams has knowledge with regard to the condition of the area in which Plaintiff fell at the time of the accident. Mr. Adams should only be contacted through the undersigned counsel for Winn-Dixie.

**B. Documents in the Possession, Custody or Control of Winn-Dixie that may be used to Support its Defenses.**

To the extent not privileged or otherwise protected from discovery, any documents responsive to this required disclosure will be made available for viewing and inspection at a time mutually convenient to the parties at the following address:

Starnes & Atchison, LLP  
RSA- Battle House Tower, 34th Floor  
11 North Water Street  
Mobile, AL 36602

At this time, Winn-Dixie has no documents that are required to be disclosed pursuant to Rule 26(a)(1).

**C. Computation of Damages.**

Upon information and belief, Plaintiff is not entitled to any damages or other relief from this Defendant.

**D. Insurance Agreements.**


Winn-Dixie is self-insured for this loss, and there is no applicable insurance agreement.

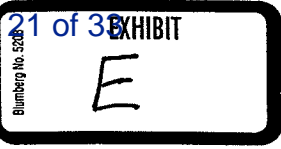
<sup>4</sup>  
s/SCOTT D. STEVENS  
M. WARREN BUTLER  
BUTLM3190  
SCOTT D. STEVENS  
STEVS0320  
Attorneys for Defendant  
Starnes & Atchison LLP  
RSA Battle House Tower, 34<sup>th</sup> Floor  
P. O. Box 1548  
Mobile, AL 36633-1548  
Phone: (251) 405-5065  
E-mail: wbutler@starneslaw.com  
sstevens@starneslaw.com

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 24 day of MARCH, 2008, electronically filed notice of the foregoing with the Clerk of the Court using the CM/ECF system and mailed a copy of the same to counsel at the following address:

Jake A. Norton, Esq.  
Cochran, Cherry, Givens,  
Smith, Lane & Taylor, P.C.  
P. O. Box 927  
Dothan, AL 36302  
Fax: 334-793-8280  
Phone: 334-793-1555

  
s/SCOTT D. STEVENS  
SCOTT D. STEVENS  
STEVS0320



IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ANNIE BELL LAMBERT,

\*

Plaintiff,

\*

CASE NO. 1:08-cv-00080-SRW

v.

\*

WINN-DIXIE STORES, INC.,

\*

Formerly in the Circuit Court of  
Houston County, AL

Defendant.

\*

Case No. 08-900008-L


**DEFENDANT'S SUPPLEMENTAL INITIAL DISCLOSURES**

Comes now the Defendant, Winn-Dixie Stores, Inc. ("Winn-Dixie"), by and through undersigned counsel, and supplements its Rule 26 disclosures to add the following:

**A. Individuals likely to have Discoverable Information which Winn-Dixie may use to Support its Claims or Defenses.**

1. James Boswell  
59 County Road 23  
Calera, Alabama.  
Phone: 334-397-4308

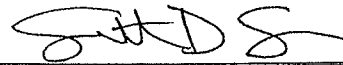
Mr. Boswell was a Winn-Dixie employee and has knowledge with regard to the condition of the area in which Plaintiff fell at the time of the accident.

  
M. WARREN BUTLER  
BUTLM3190  
SCOTT D. STEVENS  
STEVS0320  
Attorneys for Defendant  
Starnes & Atchison LLP  
RSA Battle House Tower, 34<sup>th</sup> Floor  
P. O. Box 1548  
Mobile, AL 36633-1548  
Phone: (251) 405-5065  
E-mail: wbutler@starneslaw.com  
sstevens@starneslaw.com

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 24 day of MAY, 2008, served by U. S. Mail a copy of the same to counsel at the following address:

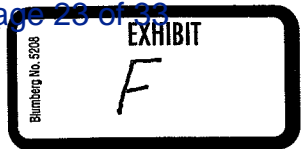
Jake A. Norton, Esq.  
Cochran, Cherry, Givens,  
Smith, Lane & Taylor, P.C.  
P. O. Box 927  
Dothan, AL 36302  
Fax: 334-793-8280  
Phone: 334-793-1555



---

SCOTT D. STEVENS  
STEVVS0320





IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

ANNIE BELL LAMBERT,

\*

Plaintiff,

\*

CASE NO. 1:08-cv-00080-SRW

v.

\*

WINN-DIXIE STORES, INC.,

\*

Formerly in the Circuit Court of  
Houston County, AL

Defendant.

\*

Case No. 08-900008-L

NOTICE OF DEPOSITION

TO : Jake A. Norton, Esq.  
Cochran, Cherry, Givens,  
Smith, Lane & Taylor, P.C.  
P. O. Box 927  
Dothan, AL 36302  
Fax: 334-793-8280  
Phone: 334-793-1555

Freedom Court Reporting  
367 Valley Avenue  
Birmingham, AL 35209  
877-373-3660, Ext. 120

DEPONENT: Annie Bell Lambert

DATE: June 3, 2008

TIME: 10:00 a.m.

LOCATION: Cochran, Cherry, Givens, Smith, Lane & Taylor, P.C.  
163 W. Main Street  
Dothan, AL 36301  
334-793-1555

Please take notice that STARNES & ATCHISON, attorneys for the Defendant, will take the deposition of the deponent named above, at the time, date and location indicated above, upon oral examination pursuant to the *Alabama Rules of Civil Procedure*, before an officer duly authorized to administer oaths and swear witnesses. The oral examination will continue from day to day until completed and you are invited to attend if you desire.

Dated 21 day of MAY, 2008.



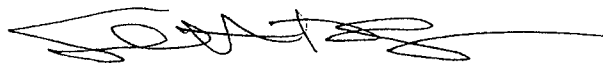
---

M. WARREN BUTLER  
BUTLM3190  
SCOTT D. STEVENS  
STEVSO320  
Attorneys for Defendant  
Starnes & Atchison LLP  
RSA Battle House Tower, 34<sup>th</sup> Floor  
P. O. Box 1548  
Mobile, AL 36633-1548  
Phone: (251) 405-5065  
E-mail: wbutler@starneslaw.com  
sstevens@starneslaw.com

CERTIFICATE OF SERVICE

I do hereby certify that I have on this the 21 day of MAY, 2008, I served the foregoing on counsel via U. S. Mail as follows:

Jake A. Norton, Esq.  
Cochran, Cherry, Givens,  
Smith, Lane & Taylor, P.C.  
P. O. Box 927  
Dothan, AL 36302  
Fax: 334-793-8280  
Phone: 334-793-1555



---

SCOTT D. STEVENS



**IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**ANNIE BELL LAMBERT,**

**Plaintiff,**

**vs.**

**WINN-DIXIE STORES, INC.,**

**Defendant.**

) ) ) ) ) ) ) )

**CASE NO. 1:08-cv-80-MEF**

**) Formerly in the Circuit Court of**  
**) Houston County, AL.**  
**) Case No. 08-900008-L**

**NOTICE TO TAKE DEPOSITION**

TO: Scott D. Stevens  
Starnes & Atchison, LLP  
P.O. Box 1548  
Mobile, AL 36633

DATE: Tuesday, June 3, 2008

TIME: 1:30 pm

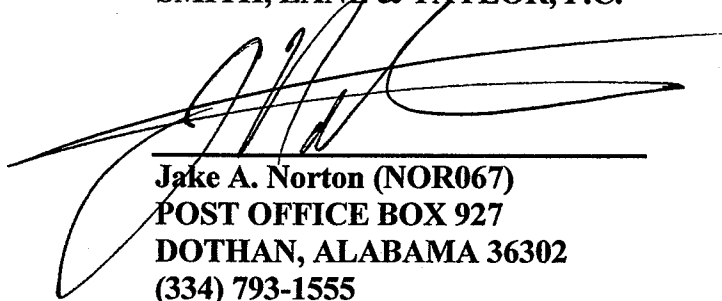
LOCATION: Cochran, Cherry, Givens, Smith, Lane & Taylor, P.C.  
163 West Main Street  
Dothan, Al. 36302

**PLEASE TAKE NOTICE** Plaintiff will take the deposition of **Mr. Chris Adams** on **June 3, 2008 at 1:30 P.M. CST** at the Office of **Mr. Jake A. Norton, Cochran, Cherry, Givens, Smith, Lane & Taylor, P.C. 163 West Main Street Dothan, Alabama 36302**. Said deposition will be taken upon oral examination, pursuant to the ALABAMA RULES OF CIVIL PROCEDURE, before an Official Court Reporter authorized by law to administer oaths. These depositions are being taken for the purpose of discovery, for use at

trial, or both of the foregoing, or for such other purposes as are permitted under the applicable and governing rules. Said depositions shall continue day to day until complete.

Dated this 21<sup>st</sup> day of May, 2008.

**COCHRAN, CHERRY, GIVENS,  
SMITH, LANE & TAYLOR, P.C.**

A large, stylized handwritten signature in black ink, likely belonging to Jake A. Norton, is written over a horizontal line. The signature is fluid and extends to the right.

**Jake A. Norton (NOR067)  
POST OFFICE BOX 927  
DOTHAN, ALABAMA 36302  
(334) 793-1555  
ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

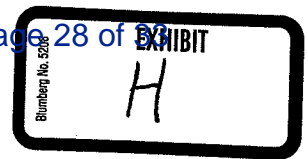
I hereby certify that a copy of the foregoing has been served upon all counsel of record by placing same in the U.S. mail postage prepaid and properly addressed as follows on this the 21<sup>st</sup> day of May, 2008:

Scott D. Stevens  
Starnes & Atchison, LLP  
P.O. Box 1548  
Mobile, Al. 36633



Jake A. Norton

cc: Court Reporters



**COCHRAN, CHERRY, GIVENS,  
SMITH, LANE & TAYLOR, P.C.**



**JAKE A. NORTON**

Attorney for Plaintiff

Post Office Box 927

Dothan, Alabama 36302

(334) 793-1555

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18th day of June, 2008, served a copy of the foregoing upon counsel of record by placing a copy of same in the U.S. Mail, postage prepaid and addressed as follows:

Scott D. Stevens, Esquire  
Starnes & Atchison, LLP  
P.O. Box 1548  
Mobile, Al. 36633



Of Counsel



IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

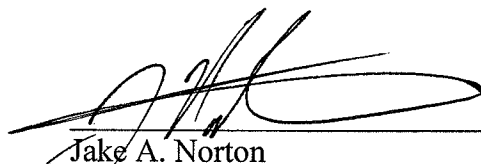
ANNIE BELL LAMBERT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO. 1:08-cv-80-MEF
	)	
WINN-DIXIE STORES, INC.,	)	Formerly in the Circuit Court of
	)	Houston County, AL.
Defendant.	)	Case No. 08-900008-L

2<sup>nd</sup> AFFIDAVIT OF JAKE A. NORTON

Personally appeared before me, the undersigned, who being by me duly sworn,  
deposes and says as follows:

1. My name is Jake A. Norton and I am counsel for the plaintiff in the above styled action. I am over the age of nineteen and I have personal knowledge of the facts contained in this affidavit. I am competent to testify in court if called to do so.
2. I have visited Winn-Dixie's website, <http://www.winn-dixie.com/>, investigated their area of operation, and have printed the pertinent list of stores owned by Winn-Dixie under the heading "Winn-Dixie Stores, Inc." I have attached said printouts and have attached them to this affidavit as attachments 1 and 2.

Further affiant saith not.

  
Jake A. Norton

Dated this the 4<sup>th</sup> day of August, 2008.

STATE OF ALABAMA)  
COUNTY OF DALE )

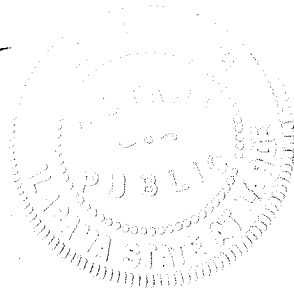
Jake A. Norton, being first duly sworn, deposes and says that he has read the foregoing instrument and he knows the contents thereof; that the same is true to his knowledge and belief.

Sworn to and subscribed before me this the 4<sup>th</sup> day of August, 2008.

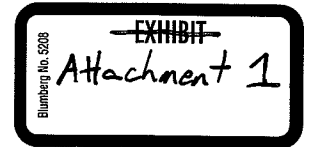
Haley Sterling  
NOTARY PUBLIC

My Commission Expires

April 18, 2012







## About Us : Area of Operation

Winn-Dixie operates supermarkets throughout the Southeastern U.S. with stores in Florida, Georgia, Alabama, Mississippi, and Louisiana. At every location, we're committed to getting better all the time!

The map below illustrates each Designated Market Area, or DMA, in which Winn-Dixie Stores, Inc. currently operates stores. To get detailed information on stores in each DMA, please [click here](#).

The company also operates distribution centers in Jacksonville, Miami and Orlando, FL; Montgomery, AL; and Hammond, LA. In addition, manufacturing plants produce or process a variety of products including coffee, tea, spices, carbonated and non-carbonated drinks, frozen cream, sherbet and milk.

To get detailed information on distribution centers and plants in each DMA, please [click here](#).

---

**Winn-Dixie Stores, Inc.**

The list below is comprised of the stores currently operated by Winn-Dixie.

To sort the list, please click the appropriate column header at the top of the table. By default, the list is sorted by DMA (Designated Market Area).

*Disclaimer: We make every effort to maintain current information regarding the status of each store location. There may be limited occasions in which the site may not reflect the most current status. We apologize in advance if this causes any inconvenience to any of our valued customers.*

DMA	Region	ZIP	State	City	Street Address	Shopping Center	Store Type	Store #	County	Status
Albany	Jacksonville	31707	GA	ALBANY	2800 OLD DAWSON RD	CROSS STATION SHOPPING CENTER	Marketplace	22	DOUGHERTY	FOOTPRINT
Albany	Jacksonville	31768	GA	MOULTRIE	103 TALMADGE DRIVE	MARKETPLACE SHOPPING CENTER	Marketplace	101	COLQUITT	FOOTPRINT
Albany	Jacksonville	31763	GA	LEESBURG	1553 US 19 SOUTH	LEE MARKET	Marketplace	110	LEE	FOOTPRINT
Albany	Jacksonville	31705	GA	ALBANY	2418 SYLVESTER ROAD	CROSSROADS MARKETPLACE	Marketplace	120	DOUGHERTY	FOOTPRINT
Albany	Jacksonville	31701	GA	ALBANY	200 E. OAKRIDGE DR		Winn Dixie	172	DOUGHERTY	FOOTPRINT
Albany	Jacksonville	31730	GA	CAMILLA	129 US HWY 19 NORTH	CAMILLA MARKETPLACE	Winn Dixie	175	MITCHELL	FOOTPRINT
Baton Rouge	New Orleans	70805	LA	BATON ROUGE	6800 GREENWELL SPRINGS		Marketplace	1453	EAST BATON ROUGE	FOOTPRINT
Baton Rouge	New Orleans	70806	LA	BATON ROUGE	5555 BURBANK DRIVE	NELSON PLAZA SHOPPING CENTER	Marketplace	1454	EAST BATON ROUGE	FOOTPRINT
Baton Rouge	New Orleans	70810	LA	BATON ROUGE	8601 SIEGEN LANE		Marketplace	1461	EAST BATON ROUGE	FOOTPRINT
Baton Rouge	New Orleans	70816	LA	BATON ROUGE	13555 OLD HAMMOND HWY.		Marketplace	1467	EAST BATON ROUGE	FOOTPRINT
Baton Rouge	New Orleans	70769	LA	PRAIRIEVILLE	17682 AIRLINE HGWY		Marketplace	1590	ASCENSION	FOOTPRINT
Baton Rouge	New Orleans	70785	LA	WALKER	28145 WALKER SOUTH ROAD	WALKER MARKETPLACE	Marketplace	1591	LIVINGSTON	FOOTPRINT
Baton Rouge	New Orleans	70760	LA	NEW ROADS	420 HOSPITAL ROAD	ACADIAN VILLAGE SHOPPING CENTR	Marketplace	1572	POINTE COUPEE	FOOTPRINT
Baton Rouge	New Orleans	70818	LA	BATON ROUGE	10974 JOOR RD	INTERSTATE SHOPPING CENTER	Marketplace	1576	EAST BATON ROUGE	FOOTPRINT
Baton Rouge	New Orleans	70816	LA	BATON ROUGE	13002 COURSEY BLVD		Marketplace	1577	EAST BATON ROUGE	FOOTPRINT
Baton Rouge	New Orleans	70791	LA	ZACHARY	5005 CHURCH STREET	RIVERSIDE PLAZA	Marketplace	1581	EAST BATON ROUGE	FOOTPRINT
Baton Rouge	New Orleans	70538	LA	FRANKLIN	204 NORTHWEST BLVD.	FERRIDAY MARKET	Winn Dixie	1559	SAINT MARY	FOOTPRINT
Biloxi Gulfport	New Orleans	39503	MS	GULFPORT	11312 H HWY 49	ORANGE GROVE SHOPPING CENTER	Winn Dixie	1511	HARRISON	FOOTPRINT
Biloxi Gulfport	New Orleans	39501	MS	GULFPORT	1444 EAST PASS ROAD		Marketplace	1512	HARRISON	FOOTPRINT
Biloxi Gulfport	New Orleans	39540	MS	DIBERVILLE	10511 D'IBERVILLE BLVD.	K-MART SHOPPING CENTER	Marketplace	1513	HARRISON	FOOTPRINT
Biloxi Gulfport	New Orleans	39564	MS	OCEAN SPRINGS	1515 BIENVILLE BLVD	SPRING PLAZA	Winn Dixie	1478	JACKSON	FOOTPRINT
Biloxi Gulfport	New Orleans	39560	MS	LONG BEACH	109 NORTH CLEVELAND AVE.	LONG BEACH VILLAGE	Marketplace	1479	HARRISON	FOOTPRINT
Biloxi Gulfport	New Orleans	39531	MS	BILOXI	2384 PASS RD.	POPP'S FERRY SHOPPING CENTER	Winn Dixie	1357	HARRISON	FOOTPRINT
Birmingham	Jacksonville	35215	AL	BIRMINGHAM	2402 OLD SPRINGVILLE ROAD	CHALKVILLE SQUARE SHOPPING CTR	Marketplace	574	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	35022	AL	BESSEMER	2910 MORGAN RD, SUITE 128	MORGAN ROAD SQUARE	Marketplace	595	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	35044	AL	CHILDERSBURG	33404 US HWY 280	CHILDERSBURG MART	Winn Dixie	400	TALLADEGA	FOOTPRINT
Birmingham	Jacksonville	35208	AL	BIRMINGHAM	2220 BESSEMER ROAD	FIVE POINTS WEST SHOPPING CENT	Marketplace	405	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	35404	AL	TUSCALOOSA	4201 UNIVERSITYBLVD	FIVE POINTS SHOPPING CENTER	Marketplace	407	TUSCALOOSA	FOOTPRINT
Birmingham	Jacksonville	35125	AL	PELL CITY	1009 MARTIN ST.	PELL CITY MARKETPLACE	Winn Dixie	410	SAINT CLAIR	FOOTPRINT
Birmingham	Jacksonville	35045	AL	CLANTON	640 OLLIE AVENUE	CLANTON MARKETPLACE	Winn Dixie	411	CHILTON	FOOTPRINT

Birmingham	Jacksonville	36201	AL	ANNISTON	800 NOBLE STREET		Winn Dixie	429	CALHOUN	FOOTPRINT
Birmingham	Jacksonville	36206	AL	ANNISTON	2495 HWY 431	SAKS PLAZA	Winn Dixie	434	CALHOUN	FOOTPRINT
Birmingham	Jacksonville	35213	AL	BIRMINGHAM	4476 MONTEVALLO ROAD	OLD SPRINGFIELD SHOPPING	Marketplace	435	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	35906	AL	RAINBOW CITY	3331 RAINBOW DRIVE	RAINBOW MARKETPLACE	Marketplace	442	ETOWAH	FOOTPRINT
Birmingham	Jacksonville	36207	AL	ANNISTON	1408 GOLDEN SPRINGS ROAD	GREENBRIAR STATION	Marketplace	447	CALHOUN	FOOTPRINT
Birmingham	Jacksonville	35401	AL	TUSCALOOSA	1503 CULVER ROAD	WESTGATE SHOPPING CENTER	Winn Dixie	453	TUSCALOOSA	FOOTPRINT
Birmingham	Jacksonville	35068	AL	FULTONDALE	1721 HWY 31 N	THE QUAIL RUN VILLAGE	Marketplace	458	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	35173	AL	TRUSSVILLE	465 MAIN STREET	TRUSSVILLE MARKETPLACE	Marketplace	461	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	36203	AL	OXFORD	4920 HWY 78 WEST	COLDWATER CREEK	Winn Dixie	462	CALHOUN	FOOTPRINT
Birmingham	Jacksonville	35080	AL	HELENA	335 HELENA MARKET PLACE	HELENA MARKETPLACE	Marketplace	469	SHELBY	FOOTPRINT
Birmingham	Jacksonville	35405	AL	TUSCALOOSA	9750 HIGHWAY 69 SOUTH	ENGLEWOOD VILLAGE	Marketplace	479	TUSCALOOSA	FOOTPRINT
Birmingham	Jacksonville	35501	AL	JASPER	2601 HWY 78 EAST	CRUMP MARKETPLACE	Marketplace	496	WALKER	FOOTPRINT
Birmingham	Jacksonville	35126	AL	PINSON	4701 CENTERPOINT RD	PINSON MARKETPLACE	Marketplace	500	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	35244	AL	BIRMINGHAM	2653 VALLEYDALE ROAD	VALLEYDALE MARKETPLACE	Marketplace	514	SHELBY	FOOTPRINT
Birmingham	Jacksonville	35243	AL	VESTAVIA HILLS	3925 CROSSHAVEN DRIVE		Marketplace	517	JEFFERSON	FOOTPRINT
Birmingham	Jacksonville	35043	AL	CHELSEA	150 CHELSEA CORNERS	CHELSEA CORNERS	Marketplace	509	SHELBY	FOOTPRINT
Birmingham	Jacksonville	36265	AL	JACKSONVILLE	815 PELHAM ROAD S.	JACKSONVILLE MARKETPLACE	Marketplace	525	CALHOUN	FOOTPRINT
Birmingham	Jacksonville	35475	AL	NORTHPORT	13580 Hwy 43 North	TALLADEGA SHOPPING CENTER	Marketplace	526	TUSCALOOSA	FOOTPRINT
Birmingham	Jacksonville	35476	AL	NORTHPORT	10 MCFARLAND BLVD.	ESSEX SQUARE MARKETPLACE	Marketplace	528	TUSCALOOSA	FOOTPRINT
Birmingham	Jacksonville	35023	AL	HUEYTOWN	104 RIVER SQUARE PLAZA	A211	Winn Dixie	550	JEFFERSON	FOOTPRINT
Columbus	Jacksonville	31709	GA	AMERICUS	1208 CRAWFORD ST.	MARKET PLACE OF AMERICUS	Marketplace	545	SUMTER	FOOTPRINT
Columbus	Jacksonville	31907	GA	COLUMBUS	1100 HUNT AVENUE	BUENA VISTA VILLAGE	Marketplace	482	MUSCOGEE	FOOTPRINT
Columbus	Jacksonville	31907	GA	COLUMBUS	5750 MILGEN ROAD	OLD TOWNE PLAZA	Marketplace	480	MUSCOGEE	FOOTPRINT
Columbus	Jacksonville	36027	AL	EUFAULA	1037 S. EUFAULA AVE.	EUFAULA SQUARE	Marketplace	478	BARBOUR	FOOTPRINT
Columbus	Jacksonville	36830	AL	AUBURN	1625 E UNIVERSITY DRIVE	UNIVERSITY CROSSING	Marketplace	470	LEE	FOOTPRINT
Columbus	Jacksonville	31907	GA	COLUMBUS	4231 MACON ROAD	EDGEWOOD STATION	Marketplace	443	MUSCOGEE	FOOTPRINT
Columbus	Jacksonville	36801	AL	OPELIKA	1441 FOXRUN PARKWAY	BETTS CROSSING	Marketplace	437	LEE	FOOTPRINT
Columbus	Jacksonville	31903	GA	COLUMBUS	1627 S LUMPKIN ROAD	RIVERSQUARE MARKETPLACE	Marketplace	438	MUSCOGEE	FOOTPRINT
Columbus	Jacksonville	31909	GA	COLUMBUS	6770 VETERANS PARKWAY	NORTH CROSSING	Marketplace	439	MUSCOGEE	FOOTPRINT
Columbus	Jacksonville	36867	AL	PHENIX CITY	3952 US HWY 80	ALEXANDER CITY SHOPPING CENTER	Marketplace	433	RUSSELL	FOOTPRINT
Columbus	Jacksonville	36832	AL	AUBURN	1617 SOUTH COLLEGE STREET	TIGER CROSSING SHOPPING CENTER	Marketplace	579	LEE	FOOTPRINT
Dothan	Jacksonville	36301	AL	DOTHAN	1151 ROSS CLARK CR	DOTHAN EAST	Marketplace	457	HOUSTON	FOOTPRINT
Dothan	Jacksonville	36301	AL	DOTHAN	2131 ROSS CLARK CIRCLE	SOUTHVIEW SQUARE SHOPPING CTR	Marketplace	454	HOUSTON	FOOTPRINT
Dothan	Jacksonville	36330	AL	ENTERPRISE	705 BOLLVEEVIL CIRCLE	BOLLWEEVIL PLAZA	Winn Dixie	476	COFFEE	FOOTPRINT
Dothan	Jacksonville	36301	AL	DOTHAN	3850 W. MAIN STREET	HOUSTON PLACE	Marketplace	422	HOUSTON	FOOTPRINT
Dothan	Jacksonville	36303	AL	DOTHAN	1571 WESTGATE PKWY	WIREGRASS PLAZA	Marketplace	426	HOUSTON	FOOTPRINT
Ft Myers Naples	Miami	34266	FL	ARCADIA	1330 E OAK STREET	ARCADIA MARKET PLACE	Winn Dixie	618	DE SOTO	FOOTPRINT
Ft Myers Naples	Miami	34142	FL	IMMOKALEE	1602 LAKE TRAFFORD ROAD	IMMOKALEE PLAZA	Winn Dixie	751	COLLIER	FOOTPRINT
Ft Myers Naples	Miami	33931	FL	FT MYERS BEACH	17105 SAN CARLOS BLVD	SUMMERLIN SQUARE	Winn Dixie	717	LEE	FOOTPRINT
Ft Myers Naples	Miami	34224	FL	ENGLEWOOD	4100 MCCALL ROAD		Marketplace	720	CHARLOTTE	FOOTPRINT
Ft Myers Naples	Miami	33935	FL	LA BELLE	906 S. MAIN STREET		Marketplace	721	HENDRY	FOOTPRINT
Ft Myers Naples	Miami	33917	FL	N FT MYERS	1850 N TAMiami TRAIL	WEAVERS CORNER	Winn Dixie	723	LEE	FOOTPRINT
Ft Myers Naples	Miami	33956	FL	ST JAMES CITY	9706 STRINGFELLOW ROAD	PINE ISLAND CENTER	Winn Dixie	726	LEE	FOOTPRINT
Ft Myers Naples	Miami	33905	FL	FORT MYERS	14600 PALM BEACH BLVD	EAST GATE SQUARE	Marketplace	728	LEE	FOOTPRINT